

Chapter 327 of the Acts of 1998

AN ACT PROTECTING CONSUMERS FROM THE UNAUTHORIZED SWITCHING OF THEIR LOCAL AND LONG DISTANCE TELECOMMUNICATIONS SERVICE PROVIDERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 93 of the General Laws is hereby amended by adding the following six sections:-

Section 108. As used in sections 108 to 113, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Customer", a person who resides in the commonwealth and subscribes to local or long distance telecommunications services.

"Department", the department of telecommunications and energy.

"Interexchange carrier" or "IXC", any person engaged in the provision of long distance telephone service.

"Letter of agency" or "LOA", a document meeting the form and content requirements of section 109 and 47 CFR 64.1150.

"Local exchange carrier" or "LEC", any person engaged in the provision of telephone exchange service, not including a person engaged in the provision of commercial mobile service under section 332(e) of the Federal Communications Act of 1934, except to the extent that the department determines such service should be included in the definition of such term.

"Third party verification" or "TPV", service provider, an entity registered with the department pursuant to section 12E of chapter 159 that provides customer authorization confirmation services under section 110.

Section 109. (a) For purposes of section 110, a change in a customer's primary IXC or LEC shall be considered to have been authorized only if the IXC or LEC that initiated that change provides confirmation that the customer did authorize such change either through a signed LOA or oral confirmation of authorization obtained by a company registered with the department to provide TPV services in the commonwealth.

(b) (1) A letter of agency shall be a separate document whose sole purpose is to authorize an IXC or LEC to initiate a primary IXC or LEC change.

(2) A letter of agency shall not be combined with inducements of any kind on the same document.

(3) At a minimum, a letter of agency shall be printed in 12 point type and shall contain clear and unambiguous language that confirms:-

(i) the customer's billing name and address, and each telephone number for which a customer requests to change its primary IXC or LEC;

(ii) the customer's decision to change its primary IXC or LEC to the new IXC or LEC;

(iii) the customer understands that only one IXC may be designated as the customer's primary long distance provider for any one telephone number;

(iv) the customer understands that only one LEC may be designated as the customer's primary local telephone exchange service provider; and

(v) the customer understands that a charge to the customer may result from changing the customer's primary IXC or LEC.

(4) Letters of agency shall not suggest or require that a customer take any action to retain current IXC or LEC.

(c) (1) Third party verification shall be accomplished by having a person talk directly to the customer to obtain oral confirmation that the customer did authorize a change in a primary IXC or LEC service for a particular telephone line identified.

(2) A person during the third party verification call shall inform the customer called that the sole purpose of the call is to verify that the customer authorized a change in the primary IXC or LEC service for the particular line identified and that to qualify for verification the customer must be recorded. If the customer agrees to the recording of the call, the balance of the call shall be recorded, and the following shall be confirmed:

(i) the identity of the person spoken to as well as appropriate verification data;

(ii) the authority of the person spoken to in order to authorize a change in the primary IXC or LEC for a particular line identified;

(iii) that the authorization has been given to change the primary IXC or LEC for a particular telephone line identified;

(iv) the identity of the IXC or LEC which the customer has authorized to be the new primary IXC or LEC service provider.

(3) Recordings made by persons providing TPV services shall be retained for 12 months and copies shall be made available at no charge upon request to the department, the attorney general, or the customer. No information obtained from the customer as part of any third party verification shall be used for any marketing purpose.

(4) The department shall promulgate rules and regulations setting forth such further requirements for the conduct of third party verification calls and recordings to protect against incorrect, inaccurate or falsified verification.

(5) The department may waive the provisions of this section requiring the recording of third party verification by an entity that can demonstrate to the satisfaction of said department that it has an adequate verification system according to standards that ensure a level of protection for consumers equivalent to that of recording.

Section 110. (a) Either a customer, IXC, or LEC may initiate a complaint that a customer's IXC or LEC has been switched without the customer's authorization.

(b) The customer, IXC or LEC shall make the complaint within 90 days after the statement date of the notice indicating that the customer's IXC or LEC has been switched.

(c) The customer, IXC or LEC shall make the complaint with the department.

(d) The department shall request from the customer: a copy of the customer's telephone bill, the name of the original IXC or the original LEC, the name of the new IXC or new LEC, and any other information the department deems relevant, within ten business days of receiving the complaint.

(e) The customer shall return the requested information to the department within 15 business days of the department's notifying the customer.

(f) Within ten business days of receiving the requested information from the customer, the department shall send to: (i) the customer, a letter acknowledging receipt of the information; (ii) the original IXC or original LEC, a letter informing the original IXC or original LEC of the pending complaint and requesting other information relevant to the IXC or LEC switch; (iii) the new IXC or LEC, a letter informing it of the pending complaint, requesting the customer's LOA or TPV, and requesting other information the department deems relevant; and (iv) the LEC, a letter requesting the customer's telephone bills for the time period since the alleged unauthorized IXC or LEC switch.

(g) The original IXC or original LEC, and the new IXC or new LEC, shall return the requested information to the department within 15 business days of the department's request.

(h) Within ten business days after receiving a copy of the customer's LOA or TPV from the new IXC or new LEC, the department shall send a copy of the LOA or TPV to the customer and notice to the customer that the customer shall provide written notice to the department within 15

business days after receipt whether they intend to challenge the material provided by the new IXC or LEC.

(i) Within 20 business days after receiving the customer's written response challenging the LOA or TPV, the department shall hold a hearing to determine, based on its review of the LOA or TPV recording and evidence presented by the customer, whether the customer did authorize the change to the new IXC or LEC. Within ten business days after the hearing the department shall render its decision.

(j) Within 20 business days after not receiving a written response from the customer concerning the LOA or TPV, the department shall determine, based on its review of the LOA or TPV recording and any other information relevant to the IXC or LEC switch, whether the customer did authorize the change to the new IXC or LEC. Within ten business days after the hearing the department shall render its decision.

(k) In addition to the procedures prescribed in this section, the department may promulgate rules and regulations to establish an alternative informal procedure for the resolution of such complaints at the election of the customer.

Section 111. (a) An LEC doing business in the commonwealth shall prepare an information booklet describing customer's rights under the provisions of sections 108 to 113, inclusive. The LEC shall mail such booklet to each of its customers, including new customers. The information booklet shall be approved by the department.

(b) After switching a customer's IXC or LEC, said LEC shall include in the customer's next monthly statement a notice that shall include the following: (i) the customer's telephone number for which the LEC switched the IXC or LEC; (ii) the name, address, and telephone number of the original IXC or original LEC.

Section 112. (a) If the department determines that a new IXC or new LEC does not have the required LOA or TPV, the department shall calculate and require the new IXC or new LEC to refund the following: (i) to the customer, the difference between what the customer would have paid in IXC or LEC charges at the original IXC or original LEC and actual charges paid to the new IXC or new LEC, if the new IXC's or new LEC's charges are greater than what would have been charged to the customer by the original IXC or original LEC; (ii) to the customer, any reasonable expense the customer incurred, in switching to the new IXC or LEC, or switching back to the original IXC or original LEC; and (iii) the original IXC or LEC, any lost revenue, which shall consist of the amount of the money the original IXC or LEC would have received for the service used by the customer during the time the customer received IXC or LEC services from the new IXC or new LEC if the customer's IXC or LEC had not been switched. This amount shall gross, irrespective of expenses, what the original IXC or original LEC would likely have incurred providing the IXC or LEC services to the customer. If the new IXC's or new LEC's charges to the customer are lower than what would have been charged to the customer by the original IXC or original LEC, the new IXC or new LEC shall pay the original IXC or original LEC the amount equal to the charges received from the customer. Once the new IXC or new

LEC refunds the lost revenues to the original IXC or original LEC, the original IXC or original LEC shall refund, credit or adjust any incentives that were lost to the customer by the unauthorized change in the customer's IXC or LEC, including, but not limited to, frequent flyer miles and charitable contributions.

(b) An IXC or LEC determined by the department to have switched any customer's IXC or LEC without proper authorization more than once in a 12 month period, shall be subject to a civil penalty not to exceed \$1,000 for the first offense and not less than \$2,000 nor more than \$3,000 for any subsequent offense. In determining the amount of the civil penalty, the department shall consider the nature, circumstances and gravity of the violation, the degree of the respondent's culpability, and the respondent's history of prior offenses.

(c) An IXC or LEC determined by the department to have switched any customer's IXC or LEC without the proper authorization more than 20 times in a 12 month period may, after a full hearing and determination by the department that such IXC or LEC intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12 month period, be prohibited from selling telecommunications services in the commonwealth for a period of up to one year. In determining the length of suspension, the department shall consider the nature, gravity of the violation, the degree of the respondent's culpability, and the respondent's history of prior offenses.

Section 113. (a) The department shall track instances in which an IXC, LEC, or TPV company switched a customer's IXC or LEC without the customer's valid LOA or TPV.

(b) The department shall prepare an annual report of the impact of the provision of sections 108 to 113, inclusive, and submit it to the joint committee on government relations and the attorney general, within 30 days of its completion.

(c) The department shall keep monthly records of each unauthorized IXC or LEC change by company and produce an annual report of each violation by company and submit it to the joint committee on government regulations and the attorney general.

(d) The department shall keep a record of any TPV companies and any other agent affiliated with an IXC or an LEC that has engaged in the unauthorized switching of a customer's IXC or LEC.

(e) The department shall promulgate rules and regulations for the implementation of this section.

SECTION 2. >> Chapter 159 of the General Laws is hereby amended by inserting after section 12D the following section:-

Section 12E. (a) (1) A company that provides third party verification services pursuant to section 109 of chapter 93 shall apply for registration with the department.

(2) The department shall allow a company to register as a third party verification service provider only if it: (i) operates in a location physically separate from the IXC, LEC or telemarketing representative who has obtained the customer's oral authorization to submit a change order for an

IXC or LEC; (ii) is not directly or indirectly managed, controlled, directed, or owned wholly or partially, by an IXC or LEC; and (iii) does not receive commissions or compensation based upon the number of customer authorizations confirmed or sales confirmed.

(3) A company seeking to register shall file a registration application with the department.

(b) The department shall promulgate rules and regulations specifying the form and content of such application necessary to demonstrate satisfaction of the requirements of clause (ii) of subsection (a).

Approved September 11, 1998.

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